REMARKS

This Amendment and Response is in response to the Office Action, dated July 3, 2003, where the Examiner has rejected claims 32-33, 41-42, 44-45, 55-56, 70 and 73-88. By the present amendment, applicants have amended claims 32, 33, 41, 42, 44, 70, 79, 85 and 86. After the present amendment, claims 32-33, 41-42, 44-45, 55-56, 70 and 73-88 are pending in the application. Applicants respectfully request an early allowance of pending claims 32-33, 41-42, 44-45, 55-56, 70 and 73-88.

A. Rejection of Claims 32-33, 41-42, 44-45, 55-56, 70, 73-88 under 35 U.S.C. § 103(a)

The Examiner has rejected claims 32-33, 41-42, 44-45, 55-56, 70, 73-88 under 35 U.S.C. § 103(a) as being unpatentable over Goldman et al. (USPN 4,995,074) ("Goldman") in view of Dowling et al. (USPN 6,574,239) ("Dowling"). Applicants respectfully disagree.

In rejecting claim 32, although the Examiner has retracted his rejection in the previous office action, which stated "Goldman teaches the communication device keeping alive during said period of time, i.e. during hold period (col. 4 line 54 through col. 5 line 2) so that it would have been obvious to keep an upper layer protocol alive", the Examiner is now combining Goldman with Dowling, which relates to creating a virtual session at the upper layer protocol level.

Applicants respectfully submit that not only Dowling cannot be combined with Goldman in the way that the Examiner has presented, in fact, Dowling teaches away from the invention of claim 32. As amended, claim 32 recites: "A first modem for communication with a second modem over a communication channel, ... **said first modem comprising**: ... a transmitter capable of transmitting a hold request to said second modem in response to said attention signal;

... wherein said communication between said modems over said communication channel ceases for a period of time after transmitting said hold request, and wherein **said first modem keeps an upper layer protocol alive** during said period of time." (emphasis added.)

First, Dowling teaches that the modems disconnect, in contrast to claim 32, a key element of which is that the modems are placed on hold. To this end, Dowling reads:

> The physical layer communication path 180 represents a physical layer communication connection, for example, a wireline connection, a cellular wireless connection, or a network connection to the Internet. When the physical layer communication path 180 is disconnected, no physical channel exists between the client-side software and the server-side software, and the physical layer communication path 180 is said to be in a "disconnected state." (Col. 9, lines 32-39.)

Accordingly, Dowling is the direct opposite of modem-on-hold concept and teaches that modems are disconnected prior to establishing a virtual session.

Even more importantly, Dowling does not disclose, teach or suggest that a modem keeps the upper layer protocol alive, but merely that the upper layer protocol keeps itself alive. The Examiner should note that the virtual session layer of Dowling is a part of modem's upper layer.

Without hindsight, the Examiner should note that Dowling teaches away from the invention of claim 32, because how could the modems, which are taught to be disconnected in Dowling, keep the upper layer protocol alive in their disconnected state? If the modems are disconnected, then the modems are out of the picture and cannot, at the same time, keep the upper layer protocol alive.

Further, applicants respectfully submit that Goldman does not teach, disclose or suggest the modem-on-hold process of claim 32. As stated in the previous response to office action, in Goldman, modem 36 is unaware of any interruption and does not transmit a hold request to the

remote modem. Rather, Goldman discloses that interface 34 "maintains the carrier to the host modem 36 and drops the terminal ready signal going to the host." (see col. 4, line 62 - col. 5, line 11.) Therefore, modem 36 receives the carrier signal and believes that there is a connection and host 16 is merely led to believe that terminal 14 is not ready, without realizing that the communication has been interrupted. Accordingly, modem 36 does not transmit a hold request to the remote modem. Second, the modems do not cease communication in response to the hold request. Third, the modems are unaware of any interruption and cannot keep the upper layer protocol alive. Therefore, in both Goldman and Dowling, the modems are incapable of keeping the upper layer protocol alive, because either the modems have been disconnected or the modems are unaware of any interruption in communication. Accordingly, applicants respectfully submit that claim 32 should be allowed.

In addition, the Examiner has rejected claim 33 and stated that "Goldman teaches the hold request including the period of time (figure 4)." Applicants respectfully submit that the signal transmitted to the host, in figure 4 of Goldman, does not include the period of time. In fact, the decision "Has Time Out Occurred?" is made by interface 28 to determine whether a response has been received from interface 34 within a predetermined period of time. Goldman does not disclose or teach that the signal transmitted to interface 34 includes the period of time. According to Goldman if interface 34 does not respond within a period of time that is monitored by interface 28, then interface 28 toggles central office, i.e. the modem connection will be lost; however, if interface 34 responds before interface 28 determines that the period of time has expired, then modems attempt to suspend the connection. In response, the Examiner states that "a period of time parameter" is not recited in claim 33 and limitations from the specification are

not read into the claims, and that claim 33 states "said hold request includes said period of time." Applicants respectfully submit that the specification of the application, on page 8, line 9, clearly states "request to hold for a predetermined period of time", which supports claim 33.

Applicants respectfully submit that that claims 33, 41-42, 44-45, 55-56, 70 and 73-88 should be allowed at least for the reasons stated above.

B. Conclusion

For all the foregoing reasons, an early allowance and issuance of claims 32-33, 41-42, 44-45, 55-56, 70 and 73-88 pending in the present application is respectfully requested. The Examiner is invited to contact the undersigned for any questions.

Respectfully Submitted;
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